Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

DOUGLAS J. CRAWFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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24 pp

Brief Introductory Statement: The U.S. Supreme Court in Freytag v. Commissioner of Internal Revenue, 501 U.S. 868 (1991) held that the authority Congress granted to the Chief Judge of the United States Tax Court to appoint Special Trial Judges under 26 U.S.C. § 7443A(b)(4) does not violate Article II, § 2, clause 2 of the U.S. Constitution. However, Freytag did not answer the all-encompassing separation of powers question(s) presented herein.

QUESTION PRESENTED #1: Does a Special Trial Judge's ability to hear and decide cases, under 26 U.S.C. § 7443A (c), at the same level as U.S. District Court Judges threaten the institutional integrity of the judicial branch by cloaking the work of an Article I inferior officer as that of an Article III officer?

QUESTION PRESENTED # 2: Does an Article I inferior officer have the jurisdictional power to decide Petitioner's separation of powers question?

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447 U.S. 667 (1980) 8

Jurisdictional Statement: This timely filed petition for writ of certiorari is based on the published opinion in Crawford v. C.I.R., Docket No. 00-70173; Tax Ct. No. 97-14736, from the United States Court of Appeals for the Ninth Circuit filed on September 20, 2001. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

Statute under Constitutional Scrutiny: 26 U.S.C. § 7443A (c) [Special Trial Judges] Authority to make court decision. The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), or (3) of subsection (b), subject to such conditions and review as the court may provide.

I. CONCISE STATEMENT OF THE CASE

Petitioner, Douglas J. Crawford ("Petitioner") was issued several Notices of Deficiencies by the Commissioner of the Internal Revenue ("Respondent") for taxable years ending December 31, 1991 and December 31, 1993. Petitioner timely sought the intervention of the U.S. Tax Court to independently determine the amount of tax Petitioner owed, if any, for both years.

On March 9, 1998, Petitioner's case was called from the calendar for the Trial Session of the U.S. Tax Court at San Diego, California before the Honorable Special Trial Judge Norman H. Wolfe ("Wolfe"). Petitioner objected to Wolfe's

jurisdiction to **decide**[1] Petitioner's case based on the separation of powers doctrine. In addition, Petitioner objected to the assignment of a Special Trial Judge to Petitioner's case as violating the Equal Protection and Due Process Clauses of the U.S. Constitution. Finally, Petitioner objected to Wolfe's jurisdiction to decide the foregoing constitutional questions. After hearing the aforementioned jurisdictional objections, Wolfe scheduled the case for trial on March 11, 1998.

On March 11, 1998, Petitioner restated his objections from March 9, 1998. The objections

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[1] Petitioner's separation of powers objection has always been concerned with the constitutionality of 26 U.S.C. § 7443A (c), namely the ability to ***decide*** cases, not with the constitutionality of 26 U.S.C. § 7443A(a) or (b) which have to do with appointment.

were also submitted in written form and accepted as part of the record. The facts of the case were submitted as fully stipulated. On October 29, 1999, Wolfe issued a memorandum opinion, T.C. Memo 1999-361, and after a timely filed motion for reconsideration was denied, on January 7, 2000, Wolfe entered a final decision in Docket No. 14736-97.

On January 19, 2000, Petitioner filed a timely notice of appeal under 26 U.S.C. § 7482 (a) to the United States Court of Appeals for the Ninth Circuit. On September 20, 2001, the United States Court of Appeals for the Ninth Circuit issued their opinion affirming the judgment of Special Trial Judge Wolfe.

II. WITH THE HELP OF FREYTAG, CONGRESS WILL CONTINUE TO SAP THE JUDICIAL POWER FROM ARTICLE III

In 1998, Congress amended § 7443A to increase the amount of deficiency that special trial judges could decide from $10,000 to $50,000. The amount now mirrors the amount required to invoke U.S. District Court jurisdiction. More importantly, this increased amount necessarily dictates more litigants will have their cases heard and decided by special trial judges.

Unless an appeal is taken, a litigant's impression of a strong and independent federal judiciary will end at the trial stage. Unfortunately, a litigant's impression of U.S. Tax Court can hardly

be said to be that of the federal judiciary because U.S. Tax Court is not an Article III tribunal, however, rest assured that this distinction will be rarely recognized. Only those fortunate individuals that can afford to pre-pay the alleged deficient amount(s) will be able to invoke Article III protections. Thus, Congress' continued effort to "supplant the system of adjudication in independent Article III tribunals and replace it with a system of 'specialized' legislative courts" will be successful[2]. Northern Pipeline v. Marathon Pipe Line, 458 U.S. 50, 73 (1981).

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[2] Hopefully, one would recognize that this substitution of power through subterfuge not only cloaks the work of an Article I inferior officer as that of an Article III judicial officer, but also aggrandizes power from the Article III tribunal to the legislative court.

III. DECLARING 26 U.S.C. § 7443A (c) UNCONSTITUTIONAL WILL MINIMIZE THE EFFECTS ON THE U.S. TAX COURT

26 U.S.C. § 7443A (c) has only to do with a special trial judge's ability to decide cases, not with hearing them. Under 26 U.S.C. § 7443A (a) and (b), the Chief Judge of the U.S. Tax Court would still be able to assign cases to special trial judges to hear and prepare proposed findings and opinions. The ultimate decision would be reserved for judges of the U.S. Tax Court. This would be the same format that was present before the Tax Reform Act of 1986.

More importantly, eliminating special trial judges' ability to decide cases and restricting them

to the aforementioned tasks will parallel the power of a U.S. Magistrate rather than that of a U.S. District Court judge. United States v. Raddatz, 447 U.S. 667 (1980). Lastly, declaring 26 U.S.C. § 7443A (c) unconstitutional will be consistent with all Supreme Court precedent, including Freytag where the distinction between hearing a case and deciding it was clearly articulated. Freytag v. C.I.R., 501 U.S. 868, 874-875 (1991).

IV. GRANTING SPECIAL TRIAL JUDGES THE POWER TO DECIDE CONSTITUTIONAL OBJECTIONS FURTHER ERODES THE JUDICIAL POWER AND BUILDS CONSTITUTIONAL LAW PRECEDENT ABSENT ARTICLE III ACCOUTREMENTS

In U.S. Tax Court, Petitioner specifically objected to allowing a special trial judge decide the constitutional objections Petitioner set forth because it clearly illustrates the erosion of the judicial power. If a special trial judge is allowed to rule on subject matters clearly outside the province of tax law, such as Due Process, Equal Protection and Separation of Powers as submitted by Petitioner, then surely there can be no "limiting principle".

See, Northern, *supra*.

Despite Article III, section 2's unequivocal language, "The judicial Power shall extend to all Case, in Law and Equity, arising under this Constitution, ..." by virtue of Crawford v. C.I.R., special trial judges now have case law precedent that allows them to decide constitutional law issues[3]. In short, special trial judge's subject matter jurisdiction now equals that of a U.S. District Court judge.

Additionally, this expanded jurisdiction will continue to increase because of the increasing number of litigants that will have their cases decided

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[3] Curiously, the Ninth Circuit cites to Rager v. Comm'r., 775 F.2d 1081, 1083 (9th Cir. 1985) for jurisdictional support, however, Rager was decided before the Tax Reform Act of 1986 which enlarged the special trial judge's power to decide cases.

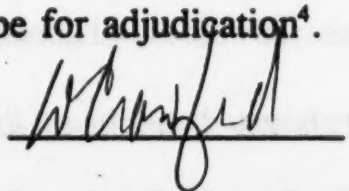
by special trial judges. Because special trial judges decisions are only appealable to the Circuit Court of Appeals in which they sit, rather than the local District Court, a special trial judge's constitutional law analysis will become precedent for all areas of law. The long-term ripple effect of allowing Article I inferior officers to decide issues collateral to their legislative jurisdiction should be readily foreseeable, and must stop.

V. CONCLUSION

The judicial branch is the weakest and the strongest branch of our government. It is the weakest branch because it has no power to act absent a case or controversy. In that regard, a loss of power can and will continue unabated. However,

it is the strongest branch because only it can nullify the acts of both branches by declaring a law unconstitutional.

Here, unlike Freytag, Petitioner duly objected to the constitutionality of 26 U.S.C. § 7443 (c) during his first appearance. Moreover, Petitioner's objections were repeated during the second appearance, submitted and accepted as part of the record. No waiver or jurisdictional problems exist in this case. In sum, the case that Freytag never was, is present and is ripe for adjudication[4].

Respectively submitted, 

Douglas J. Crawford

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[4] Petitioner has purposefully left out analysis that would answer the question(s) presented because petitioner thinks those analyses are better suited for the briefs.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS J. CRAWFORD, *Petitioner,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	No. 00-70173 Tax Ct. No. 97-14736 OPINION

Appeal from a Decision of the
United States Tax Court
Norman H. Wolfe, Special Trial Judge, Presiding

Submitted July 13, 2001[1]
Pasadena, California

Filed September 20, 2001

Before: Jerome Farris, Barry G. Silverman, and Richard A. Paez, Circuit Judges.

Per Curiam Opinion

SUMMARY

Tax/Litigation and Procedure (Civil)

The court of appeals affirmed a judgment of the Tax Court. The court held that the appointment of a special trial judge by the chief judge of the Tax Court to consider a case with an

[1]The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

amount in controversy of less than $10,000 does not violate separation of powers.

Appellant Douglas Crawford sought redetermination of 1991 income tax deficiencies in Tax Court. A special trial judge tried the case on stipulated facts. The issues at trial included whether the Tax Court had jurisdiction to consider Crawford's constitutional claims, and whether the assignment of the case to the special trial judge violated due process, equal protection, and separation of powers. The special trial judge rejected all of Crawford's constitutional claims and found a deficiency for 1991. Crawford sought reconsideration and assignment of the case to another judge. The chief judge of the Tax Court denied both motions. The special trial judge entered a final judgment.

Crawford appealed.

[1] The Tax Court is an Article I court created by Congress with limited jurisdiction to rule on deficiencies assessed by the government on taxpayers. The Tax Court's exclusively judicial role distinguishes it from other non-Article III tribunals that perform multiple functions and provides the limit on the diffusion of appointment power that the Constitution demands. [2] At the time the chief judge assigned Crawford's case to the special trial judge, the chief judge had the power to appoint special trial judges and assign to them any proceeding where neither the amount of the deficiency placed in dispute nor the amount of any claimed overpayment exceeded $10,000. [3] The provision that allows the chief judge to appoint a special trial judge to consider a case with an amount in controversy of less than $10,000, does not violate separation of powers.

[4] Tax Courts have jurisdiction to consider constitutional questions in the context of deciding deficiencies. Congress has given the chief judge of the Tax Court the express statutory authority to appoint special trial judges in a case involv-

ing less than $10,000 to make the decision of the Tax Court. The special trial judge, appointed by the chief judge of the Article I Tax Court, had jurisdiction to consider the constitutional claims in connection with the determination of the deficiency.

COUNSEL

Douglas J. Crawford, Pro per, San Diego, California, petitioner-appellant.

Paula M. Junghas, Acting Assistant Attorney General, Department of Justice, Tax Division, Washington D.C., for the respondent-appellee.

OPINION

PER CURIAM:

Douglas Crawford appeals the Tax Court's denial of his petition for redetermination of income taxes for tax year 1991 arguing that the Special Trial Judge of the Tax Court lacked jurisdiction to decide constitutional claims and that appointment of special trial judges violates the separation of powers doctrine. We affirm.

We have jurisdiction pursuant to 26 U.S.C. § 7482(a) and review United States Tax Court decisions in the same manner and to the same extent as decisions of the district court in civil bench trials. *Estate of Rapp v. Comm'r.*, 140 F.3d 1211, 1214-15 (9th Cir. 1998). We review the issues in this case, which are pure questions of law, de novo. *Id.* at 1215.

Crawford sought redetermination of 1991 income tax deficiencies in United States Tax Court. A Special Trial Judge

tried the case on stipulated facts. The issues at trial were whether: (1) the Tax Court had jurisdiction to consider Crawford's constitutional claims, (2) assignment of the case to the Special Trial Judge violated due process, equal protection and separation of powers, (3) Crawford's 1991 unemployment compensation should be included in his 1991 gross income and (4) Crawford was liable for an addition to tax for failing to file a 1991 tax return.

The Special Trial Judge rejected all of Crawford's constitutional claims and found a deficiency for 1991. Crawford sought reconsideration and assignment of the case to another judge. The Chief Judge of the Tax Court denied both motions. The Special Trial Judge entered a final judgment and Crawford filed a timely appeal.

I. Tax Court and Special Trial Judges

[1] The Tax Court is an Article I court created by Congress with limited jurisdiction to rule on deficiencies assessed by the government on taxpayers. 26 U.S.C. § 7441; *Freytag v. Comm'r.*, 501 U.S. 868, 888, 891 (1991); *Redhouse v. Comm'r.*, 728 F.2d 1249, 1253 (9th Cir. 1984). Independent of the executive and legislative branches, the Tax Court exercises judicial power in much the same way as do federal district courts. *Freytag*, 501 U.S. at 890-91. Tax Court decisions are not subject to review by either Congress or the President. *Id.* at 891. According to the Supreme Court, "[t]he Tax Court's exclusively judicial role distinguishes it from other non-Article III tribunals that perform multiple functions and provides the limit on the diffusion of appointment power that the Constitution demands." *Id.* at 892.

[2] At the time the Chief Judge assigned this case to the Special Trial Judge, § 7443A gave the Chief Judge the power to appoint special trial judges and assign to them "any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount

of any claimed overpayment exceeds $10,000."[2] 26 U.S.C. § 7443A(b)(3). Section 7443A(c) authorizes special trial judges to make decisions in proceedings "subject to such conditions and review as the court may provide." *Id.* § 7443A(c).

II. Separation of Powers

Crawford argues that the appointment of special trial judges by the Tax Court violates the separation of powers doctrine because, he contends, its judges are inferior officers of an Article I court who perform Article III functions. Whether a federal statute is constitutional is a question of law that we review de novo. *United States v. $129,727.00 U.S. Currency*, 129 F.3d 486, 491 (9th Cir. 1997).

[3] The Supreme Court has held that the authority Congress granted to the Chief Judge of the United States Tax Court to appoint special trial judges under § 7443A(b)(4)[3] does not violate separation of powers. *See Freytag*, 501 U.S. at 870. In *Freytag*, the petitioner argued that § 7443A(b)(4) was unconstitutional under the Appointments Clause[4] because it autho-

[2]In 1998, Congress amended § 7443A to increase the amount of deficiency from $10,000 to $50,000. IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, § 3103(b)(1), 112 Stat. 685, 731.

[3]Subsection (b)(4) allows the chief trial judge to appoint Special Trial Judges in "any other proceeding which the chief judge may designate." 26 U.S.C. § 7443A(b)(4).

[4]The Appointments Clause provides:

> [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II. § 2, cl. 2.

rized the Chief Judge of the Tax Court, an Article I and not Article III judge, to appoint special trial judges to hear complex cases. *Id.* at 872. The Supreme Court rejected this claim, holding that the Chief Judge may appoint special trial judges for proceedings as specified in the statute. *Id.* at 877. The Court reasoned that the Tax Court, which is an Article I court, is a "Court of Law" under the Appointments Clause. *Id.* at 890. Thus, Congress could authorize the Chief Judge to appoint special trial judges, who are inferior officers, under the authority granted in the Appointments Clause. *Id.* at 888-92. It follows that § 7443A(b)(3), which allows the Chief Judge to appoint a Special Trial Judge to consider a case with an amount in controversy of less than $10,000,[8] does not violate separation of powers.

Crawford argues that lack of judicial review by a district court is fatal to the constitutionality of the statute. We disagree. This court has de novo review of the Tax Court decisions. Moreover, Crawford had the option to litigate his tax deficiency in either Tax Court or federal district court. *See* 26 U.S.C. §§ 7422, 7442 and 7482(a). Crawford chose Tax Court and cannot now complain. *See Rager v. Comm'r.*, 775 F.2d 1081, 1083 (9th Cir. 1985).

III. Subject Matter Jurisdiction of Special Trial Judges

[4] Finally, Crawford argues that the Special Trial Judge, as an Article I judge, lacks subject matter jurisdiction to decide Crawford's separation of powers claim. The existence of subject matter jurisdiction is a question of law reviewed de novo. *Burlington Northern Santa Fe Ry. Co. v. Int'l Bhd of Teamsters Local 174*, 203 F.3d 703, 707 (9th Cir. 2000) (en banc). We previously have held that Tax Courts, which are Article I courts, have jurisdiction to consider constitutional questions in the context of deciding deficiencies. *Rager*, 775 F.2d at 1083. Congress has given the Chief Judge of the Tax

[8] *See* note 2.

Court the express statutory authority to appoint special trial judges in this type of case (less than $10,000)[6] to make the decision of the Tax Court. 26 U.S.C. § 7443A(b)(3) and (c). It follows that the Special Trial Judge, appointed by the Chief Judge of the Article I Tax Court, had jurisdiction to consider the constitutional claims in connection with the determination of the deficiency.

AFFIRMED.

[6] *See* note 2.